

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

TELMA S. DIAZ,	)	4:12CV3144
	)	
Plaintiff,	)	MEMORANDUM
v.	)	AND ORDER
	)	
JEREMIAH D. JOHNSON,	)	
	)	
Defendant.	)	

Plaintiff has filed a motion (filing [38](#)) to extend the time for filing her response to Defendant's motion for summary judgment (filing [28](#)). Plaintiff indicates in her motion that she intends to depose Defendant and the Nebraska State Patrol records custodian, but she has failed to file an affidavit or declaration establishing that such discovery must be conducted before she can respond to Defendant's motion for summary judgment, which is based on the defense of qualified immunity.<sup>1</sup> Indeed, the record shows Plaintiff has already responded to Defendant's motion by filing an opposing brief (filing [33](#)) and evidence index (filing [36](#)) one day *before* filing the motion for extension of time. Plaintiff's failure to file a supporting affidavit or declaration is fatal to her motion for extension of time. See [Fed. R. Civ. P. 56\(d\)](#) (district court may allow time to take discovery "[i]f a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition" to a motion for summary judgment). Accordingly,

IT IS ORDERED that Plaintiff's motion for extension of time (filing [38](#)) is denied.

February 22, 2013.

BY THE COURT:

*Richard G. Kopf*  
Senior United States District Judge

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<sup>1</sup> Plaintiff merely references a brief she filed in opposition to Defendant's motion to stay discovery.